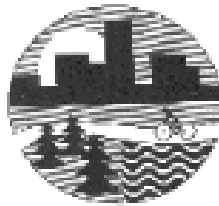


**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES – JOEL A. LERNER**

**OUTDOOR RECREATION PROJECTS
Urban Self-Help
Strategic Urban Recreation Fund
Federal Land & Water Conservation Fund
Application Package
Fiscal Year 2005**

**GRANT APPLICATION DEADLINE:
October 1, 2004 by 5PM**



**Division of Conservation Services
100 Cambridge Street, Suite 900
Boston, MA 02114
Joel A. Lerner, Director
www.mass.gov/envir/dcs**

**Contact: Melissa Cryan
Municipal Parks Grants
(617) 626-1171
Fax: (617) 626-1181
melissa.cryan@state.ma.us**

This package contains the following information you will need to file an Outdoor Recreation application. Remember: electronic filings will not be accepted.

- ◆ Director's Letter
- ◆ Time Line for Grant Programs
- ◆ Program Regulations
- ◆ Outdoor Recreation Program Application Step Procedures
- ◆ Outdoor Recreation Program Application Form
- ◆ Sample Municipal Vote
- ◆ Appraisal Report Guidelines
- ◆ Outdoor Recreation Program Selection System
- ◆ Land & Water Conservation Fund Program Overview
- ◆ Definitions of "Regional" and "Statewide"
- ◆ Regional and Statewide Usage Report

Save paper and money – please print this document on both sides.

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The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Mitt Romney
GOVERNOR

Kerry Healey
LIEUTENANT GOVERNOR

Ellen Roy Herzfelder
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181

July 1, 2004

Re: FY2005 DCS Annual Grant Round

Dear Prospective Applicant:

Thank you for your interest in the FY05 Annual Grant Round for the Self-Help, Urban Self-Help and federal Land and Water Conservation Fund Programs as announced recently by Environmental Affairs Secretary Ellen Roy Herzfelder. The enclosed application package will give you a complete overview of the program you are interested in, and should be read very carefully. **Your full, complete application is due in our office no later than 5 p.m. on October 1, 2004. The filing deadline you will note has been pushed back from the normal filing deadline of June 1, 2004.**

Secretary Roy Herzfelder's grant round announcement letter detailed her project funding priorities for each grant program and can be viewed at www.mass.gov/envir. Applicants should apply to the Self-Help program for conservation land acquisition projects, and to the Urban Self-Help program for parkland acquisition, improvement, or development projects. EOEA reserves the right to determine the allocation of state and federal sources of grant funds as project and budgetary conditions warrant.

The Romney Administration has launched a new incentive policy known as Commonwealth Capital to encourage municipalities to implement Smart Growth consistent land use practices. Beginning in FY05, DCS must include Smart Growth factors in the project selection systems. Municipalities must apply directly to the Office for Commonwealth Development for a Commonwealth Capital Score. The application, information and additional guidance documents are available online at <http://www.mass.gov/ocd/comcap.html>.

The maximum reimbursement available from the Self-Help or Urban Self-Help programs is based on your community's equalized valuation per capita decile rank and ranges from 52% to 70% of the total project cost. Federal Land and Water Conservation Fund projects may be reimbursed at up to 50%. The maximum grant award for any project has been set at \$500,000, but may be raised or lowered at the discretion of the Secretary. You may not proceed with the actual land acquisition or start construction until you have obtained approval from DCS (or the National Park Service if you receive a Land and Water Conservation Fund grant) and have executed the appropriate contracts, or have obtained written permission to proceed.

To be eligible to participate in the grant round, communities must have:

- 1) An Open Space and Recreation Plan approved by, and on file with the Division of Conservation Services; and
- 2) No unresolved "parkland" conversion issues with the Executive Office of Environmental Affairs.

Please review the enclosed step procedures, preliminary application forms, and instructions on how to complete and prepare the required documents carefully. It is crucial to the success of your application that you work closely with DCS to determine if your community is eligible to participate, if your project fits the appropriate program requirements, and to ensure that the application is complete.

Applications for acquisitions that are not accompanied by appraisals cannot be considered for funding. Be advised that all acquisition projects must be completed and closed out by June 1, 2005. Development projects, and projects funded through the Land and Water Conservation Fund may extend into FY2006.

To aid you in applying for assistance, DCS will offer a free "how-to" workshop to help you prepare a competitive preliminary application. The workshop will be held on Thursday, August 12, 2004 from 10am to 12 noon in Boston at 100 Cambridge Street. Be sure to study the enclosed information, understand the program obligations, check to determine if your community and project are eligible for assistance, and contact DCS with any questions regarding your proposal. Please RSVP for the workshop by calling DCS at (617) 626-1010. I strongly recommend that you attend a workshop if you plan to apply and look forward to working with you on your proposal.

Sincerely,

Joel A. Lerner

Director

enc. Application Package

TIME LINE FOR DCS GRANT PROGRAMS
SELF-HELP, URBAN SELF-HELP and FEDERAL LAND AND WATER CONSERVATION FUND
FY2005 APPLICATION DEADLINE OCTOBER 1, 2004

1. CALL DCS: July 2004

Is your project eligible? Applications must be submitted **before** land is acquired, or construction has begun. Is your community's Open Space and Recreation Plan up to date? Then - you need preliminary application information and should sign up for the grant workshops.

2. SUBMIT TWO COPIES OF A COMPLETED PRELIMINARY APPLICATION TO DCS BY October 1, 2004.

Work closely with DCS prior to October 1 to confirm that your preliminary application is complete. **Your full, complete application is due in our office no later than 5 p.m. on October 1, 2004.** Late or incomplete applications and electronic filings cannot be accepted! Your chief executive officer (and conservation commission members for conservation projects) must sign the application. All projects must be reviewed by your local Regional Planning Agency, and by the Massachusetts Historical Commission. Send a brief project description including a budget and USGS topographic map to these agencies for review prior to October 1, and submit their comments as soon as they are available.

3. SUBMIT APPLICATION FOR COMMONWEALTH CAPITAL SCORE - Criteria developed by Office for Commonwealth Development and required for all "Commonwealth Capital" grant programs. Open Space and Recreation Plan, Housing Compliance, and Local Funding Initiatives among other criteria are considered (see <http://www.mass.gov/ocd/comcap.html> for an application and more details).

4. SITE INSPECTION: Summer & Fall, 2004

Proposals cannot be funded on a "sight unseen" basis. DCS staff will contact you to schedule the inspection.

5. PROJECT RATINGS: Late Fall 2004

Proposals are rated by DCS using the open project selection systems. Proposals which are well developed i.e., have an affirmative Town Meeting Vote or City Council Order, will receive higher consideration for funding.

6. RECOMMENDATION FROM ENVIRONMENTAL AFFAIRS: Late Fall 2004

All proposals are rated and reviewed by DCS and presented to EOEAs' Interagency Lands Committee for funding recommendations. The ILC's recommendations are reported to the Secretary of Environmental Affairs. The Secretary's final recommendations will be presented to the Office for Commonwealth Development. Successful applicants will be contacted by DCS. Projects selected for state assistance will receive a Project Agreement and State Standard Contract. Those selected for federal Land and Water Conservation Fund assistance will receive additional instructions to prepare an application to the National Park Service.

7. VOTE TO SECURE TOTAL PROJECT COST: December 31, 2004

Congratulations are due if you have already voted to fund this project since you will be able to quickly execute your Project Agreement and State Standard Contract. *If not, the applicant city or town must vote to appropriate, expend from available funds, or borrow an amount equal to the **total project cost** of the project no later than December 31, 2004. Applicants will be expected to conform to tight expenditure timetables because DCS must expend state bond funds within the same fiscal year the grant is awarded.* The Project Agreement and State Standard Contract will not be executed unless local funding has been secured.

8. FINAL APPROVAL: Early Winter 2004

Permission to proceed on state Self-Help funded projects will be granted by DCS if the Project Agreement and State Standard Contract have been executed and the total project cost has been secured. Federal LWCF projects will follow a schedule set by NPS.

9. REIMBURSEMENT PROCEDURE: Reimbursement Request due by June 1, 2005

DCS grant programs are REIMBURSEMENT programs and require evidence of payment from the town to the landowner or contractor prior to receiving a payment from the grant. Acquisition projects must comply with M.G.L. Chapter 30B regarding municipal procurement and file with the Central Registry 30 days prior to closing. You must finish your project in accordance with the terms in the grant award letter and send a reimbursement package to DCS by June 1, 2005. Reimbursement forms and instructions are sent to you by DCS along with the project contracts. *Caution: do not purchase the property or start construction prior to executing the Project Agreement! If this is done, we will not be able to reimburse you!*

10. POST COMPLETION RESPONSIBILITIES - YOUR LAND IS NOW PROTECTED OPEN SPACE

Receipt of state assistance permanently protects your project site (Article 97 of the Articles of Amendment to the State Constitution). Any boundary encroachment, change of use, or lack of basic maintenance could constitute a conversion. The Secretary of EOEAs must approve any proposed conversion and failure to suitably replace the converted property with land of equal value and utility can result in the title of the converted land reverting to the Commonwealth. There is no "buy out" option. Federal LWCF project conversions must also be approved by the National Park Service, through EOEAs, and land of equal value and utility substituted. Strict appraisal requirements apply using the Uniform Appraisal Standards for Federal Land Acquisitions.

301 CMR 5.00: SELF-HELP AND URBAN SELF-HELP PROGRAMS

Section

- 5.01: Authority
- 5.02: Purpose
- 5.03: Definitions
- 5.04: Eligibility
- 5.05: Project Application and Selection
- 5.06: Project Conditions
- 5.07: Project Costs
- 5.08: Post-Completion Responsibilities
- 5.09: Conversion
- 5.10: Guidance Documents
- 5.11: Severability

5.01: Authority

301 CMR 5.00 is promulgated pursuant to M.G.L. c. 21A, § 2, M.G.L. c. 132A, § 11, as amended, St. 1977, c. 933, as amended, and St. 1996, c. 15.

5.02: Purpose

301 CMR 5.00 is promulgated to implement the Self-Help and Urban Self-Help grant programs by establishing uniform grant application, selection procedures and program requirements. Both the Self-Help and Urban Self-Help grant programs have two separate programs: an annual program in accordance with the grant cycle of 301 CMR 5.05(4); and, a rolling program subject to periodic notice of availability as described in 301 CMR 5.05(5).

5.03: Definitions

Division means the Division of Conservation Services in the Executive Office of Environmental Affairs.

Extreme Critical Need means a state of financial hardship where a municipality has an unemployment rate exceeding 10% or where a major business or facility closing has caused devastating economic dislocation and a substantial decrease in the municipality's tax base.

Major State Public Institution means an institution including but not limited to state and county prisons, mental health facilities, regional solid waste facilities, and federal and state military reservations. Institutions of public higher learning are excluded.

Open Space and Recreation Plan means a bound document containing the following: a summary; statement of purpose including planning process and public participation; community setting; environmental inventory and analysis; inventory of lands of conservation and recreation interest; community goals; analysis of needs; goals and objectives and five-year action plan; maps and letters of comment from the chief municipal officer; planning board and regional planning agency. Guidelines and a workbook for developing plans are available from the Division.

Particular Environmental Sensitivity means Projects located within a state-designated Area of Critical Environmental Concern ("ACEC"); or containing significant plant or animal habitat, a vernal pool, or endangered, threatened or special concern plant or animal species as certified by the Massachusetts Natural Heritage Program office; or, containing known, important archeological or historic resources and on or eligible for inclusion in the State Register of Historic Places. Particular Recreational Importance means, but is not limited to, a project that is the "flagship" or centerpiece of a community's park and recreation system; an acquisition project that significantly addresses an imbalance between the available recreation acreage per capita and the National Recreation and Park Association Standards for such acreage; a coastal or inland swimming facility; and unique recreational facilities such as zoos.

Project means the acquisition, planning, or design of conservation land reimbursed by the Self-Help Program, or the acquisition, development or renovation of parkland reimbursed by the Urban Self-Help Program.

Project Selection System means a project rating system based on a 100-point scale. The Self-Help Project Selection System awards 50 points based on demographic factors of the applicant community and 50 points based on project quality. The Urban Self-Help Project Selection System awards 40 points based on demographic characteristics of the applicant community and 60 points based on project quality. Each program's selection system awards six points for implementation of the community's open space plan and up to ten bonus points if the applicant community has or plans to site a major state public institution or has passed a debt limit override vote of open space purchases in the preceding two years.

Projects of Particular Environmental Sensitivity may be eligible for points in the rating system, and possibly an increase in the reimbursement rate. Applicants claiming eligibility for additional reimbursement for projects of Particular Environmental Sensitivity must include written comments from any of the following state agencies, as applicable: Coastal Zone Management, the Department of Conservation and Recreation's ACEC program, the Massachusetts Natural Heritage and Endangered Species Program, or the Massachusetts Historical Commission. The Secretary shall develop and may review and modify, at the Secretary's discretion, selection systems for the Self-Help, Rolling Self-Help, Urban Self-Help, and Rolling Urban Self-Help grant programs. The selection systems shall be set forth in Guidance Documents available from the Division.

Regional Project is a recreation facility that serves a population of at least 35,000 people who reside within a 25-mile radius of the facility, has parking for at least 100 cars and adequate comfort stations. Regional Projects generally provide multiple opportunities for picnicking, walking, canoeing, boating, fishing, children's recreation, and swimming. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for regional projects are available from the Division.

Rolling Self-Help Program is a rolling grant program that conforms with the minimum requirements of the Self-Help Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Rolling Urban Self-Help Program is a rolling grant program that conforms with the minimum requirements of the Urban Self-Help Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Secretary means the Secretary of Environmental Affairs or the Secretary's designee.

Self-Help Program is a grant program that provides reimbursements to municipalities of up to 90% of the allowable costs towards the purchase of land for conservation and passive recreation purposes.

Special Advisor for Environmental Justice Issues means a person so named and designated by the Secretary to review Urban Self-Help grant applications and advise the Secretary on the importance of each application in addressing environmental justice concerns.

Small Town Project is a Project which qualifies only for a maximum of \$50,000 where a community does not meet the population criteria of a city or town of over 35,000 and is not undertaking a Regional or Statewide Project.

Statewide Project is a recreation facility located within a one hour driving time from more than one Metropolitan Statistical Area, accommodates at least 200 vehicles, provides adequate comfort stations, and will also provide for more dispersed or uncommon recreation opportunities such as equestrian trail use, overnight camping, nature center programs, golf, group picnicking, large beach use, boating, skiing, and live animal viewing such as zoos. Any Project located on Nantucket Island, Martha's Vineyard, and the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham is considered statewide regardless of the project scope. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for statewide projects are available from the Division.

Urban Self-Help Program is a grant program that provides reimbursements to municipalities of up to 90% of allowable costs towards the acquisition of land, and the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

5.04: Eligibility

(1) Planning Requirement. No application will be considered by the Secretary until the Applicant has filed an approved Open Space and Recreation Plan or submits a draft plan with the preliminary application. If a municipality's plan has not been approved by the Secretary at the time of the project selection process, there will be no rating points awarded for plan implementation under the Project Selection System.

(2) Self-Help Program.

(a) Only municipalities with Conservation Commissions duly established pursuant to M.G.L. c. 40, § 8C are eligible to participate in the Self-Help Program.

(b) Self-Help Program grants are available to fund the acquisition of land for conservation purposes, and to plan or design suitable public outdoor facilities for these properties.

(3) Urban Self-Help Program.

(a) Only municipalities with a park, playground, or recreation commission, or any combination thereof, duly established pursuant to M.G.L. c. 45, § 2, and a Conservation Commission duly established pursuant to M.G.L. c. 40, § 8C, are eligible to participate in the Urban Self-Help Program.

(b) Urban Self-Help Program grants are available to fund the acquisition of land for park and outdoor recreation purposes, and for the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

(c) The following municipalities are eligible to apply for Urban Self-Help grants:

1. Any city or a town of over 35,000 year round inhabitants; or
2. Municipalities with a population of less than 35,000 year-round inhabitants that:
 - a. propose Statewide or Regional Projects and demonstrate regional or statewide usage to the satisfaction of the Secretary; or
 - b. propose a Small Town Project.

(d) The Special Advisor for Environmental Justice Issues shall publicize in urban areas the existence of the Urban Self-Help Program, and publicize, make available and assist municipalities with interpreting the Urban Self-Help Program guidelines.

(4) Affirmative Action and Accessibility. To be eligible for assistance, municipalities must be in compliance with a Civil Rights Review Comment from the Massachusetts Commission Against Discrimination, and Executive Order No. 215, concerning Disbursement of State Development Assistance for Affordable Housing. Municipalities must also show that all parks and recreation facilities are in compliance with the Americans with Disabilities Act (P.L. 101-336), formerly required under Section 504 of the Rehabilitation Act of 1973, P.L. 93-112 (Federal Handicapped Accessibility Guidelines), as amended; and Department of Interior Regulations 43 CFR 17, Subpart B, or show how and when such facilities will be brought into compliance with the above regulations.

(5) Extreme Critical Need. When a municipality can demonstrate that it has extreme critical need or that its project is one of particular recreational importance as defined in 301 CMR 5.03, it may receive up to 10% more reimbursement of the total project cost. No more than five municipalities per year will be awarded this additional funding.

(6) Upon request, the municipality or its authorized representative shall provide all records, books, papers, documents, or other data relating to the Program grant to the Secretary for examination.

(7) Each program participant shall cause work on the Project to proceed within a reasonable period of time after receipt of notification from the Division that funds have been approved and will pursue the Project to completion with reasonable diligence.

5.05: Project Application and Selection

(1) Application Step Procedures. Applications shall be submitted to the Secretary in accordance with the Application

Guidelines of the Division, which are available upon request.

(2) Appraisal Reports. Applications for acquisition assistance shall be accompanied by an appraisal report prepared according to the Appraisal Report Guidelines of the Division, which are available upon request.

(3) Project Selection System. In order to distribute limited Self-Help and Urban Self-Help funds among an overwhelming number of applicants, the Secretary has developed a review process called the Project Selection System. The Project Selection System considers a number of demographic, social, environmental, and project quality factors in order to identify those projects which best protect natural resources or recreation amenities where appropriate in communities that have the greatest need for financial assistance and that have made efforts to implement their open space plans in coordination with local planning for future growth. The Project Selection System Guidelines for each grant program are available upon request from the Division.

(4) Self-Help Program and Urban Self-Help Program Grant Cycle.

The annual filing deadline for applications shall be June 1 of each year. The Secretary may alter or extend this deadline provided that public notice of the change is given at least 90 days in advance of the new deadline. Grants shall be made only once in the annual fiscal cycle; however, grants may be adjusted after the award for cause.

(5) Rolling Program Specific Requirements

- (a) Rolling Self-Help Program grants must meet all requirements applicable to the Self-Help grant program, excluding the grant cycle requirement as described in 301 CMR 5.05(4).
- (b) Rolling Urban Self-Help Program grants must meet the all requirements applicable to the Urban Self-Help grant program, excluding the grant cycle requirement as described in 301CMR 5.05(4).
- (c) The Secretary may establish additional guidelines for the Project Selection System of the Rolling Self-Help Program.
- (d) The Secretary may establish additional guidelines for the Project Selection System of the Rolling Urban Self-Help Program.
- (e) The Secretary shall provide notice of availability of funding and the associated filing deadline for any grant funding offered under either the Rolling Urban Self-Help or the Rolling Self-Help Programs. Such notice shall be effective when published either in the Massachusetts Register or the Environmental Monitor.
- (f) The Secretary may announce rolling grant rounds and accept applications from time to time and subject to available funding.

5.06: Project Conditions

(1) Off-street parking and land use and management plans may be required at the discretion of the Secretary depending upon the size of the project area, its intended use(s), the nature of the resource(s), and the availability of public transportation and on-site parking.

(2) Additional project conditions may be required by the Secretary to enhance public benefit or protection of natural resources.

(3) Program participants shall provide for fair and equitable treatment of persons and businesses to be displaced as a result of the project, and shall comply with M.G.L. c. 79A, as amended, Titles II and III of the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) where concurrent federal financial assistance is sought or intended for subsequent project phases.

(4) Property acquired or improved with Self-Help Program assistance shall be under the care, custody, and control of the Conservation Commission. Property acquired or improved with Urban Self-Help Program assistance shall be under the care, custody, and control of either the Conservation Commission or the Recreation Commission.

(5) A failure to comply with the conditions of any grant contract may result in the reduction, suspension, or withdrawal of awarded grant funds.

5.07: Project Costs

(1) Each grant program provides reimbursement of up to 90% of allowable costs towards the acquisition of land, and the

construction, restoration or rehabilitation of land for park and outdoor recreation proposes. The maximum reimbursement percentage allowed for an approved project based on the municipality's equalized valuation per capita decile rank among all Massachusetts municipalities as determined by the Secretary of Administration and Finance. A municipality's rank, and therefore its percentage of reimbursement potential, may change annually based on its increase or decrease in property valuation and population growth. The Secretary may reduce the maximum reimbursement percentage to allow for a more equitable distribution of limited funds among all municipalities. The annual reimbursement schedules are available from the Division.

(2) Subject to the approval of the Secretary, all reasonable costs associated with acquisition projects shall be eligible for reimbursement. Costs for appraisals, title searches, recording fees, surveys, costs associated with 301 CMR 5.06(3), as well as the actual approved purchase price are deemed to be eligible acquisition project costs. In addition, for Urban Self-Help Projects, the actual approved purchase price, engineering, design, construction, and construction supervision are deemed eligible project costs, however, the Secretary shall retain the right to set a fixed limit on the reimbursement of Project costs. Additional information on reimbursement procedures is available from the Division upon request.

(3) As required by M.G.L. c. 132A, § 11, reimbursement under the Self-Help Program will occur only after the participant has expended an amount equal to the total cost of the project and not until the project has been completed to the satisfaction of the Secretary. Billing procedures and forms are available from the Division.

(4) Federal funding sources such as Community Development Block Grants or Revenue Sharing that are defined by the federal government to be local money may be used to match program funds. Program reimbursements for Urban Self-Help projects may be paid periodically upon request for payments made by a municipality. Billing procedures and forms are available from the Division.

(5) The Division encourages charitable contributions for conservation purposes either in cash or real property. While real property contributions are not reimbursable, cash contributions may be utilized as the municipality's share of the project providing said cash contribution is deposited into a separate municipal account such as authorized under M.G.L. c. 40, § 5, Cl. 51 and is expended therefrom as part of the municipal appropriation for the acquisition or development. Cash contributions returned to the municipality after acquisition are also encouraged. If such contribution is prearranged or likely to occur, the appraisal process should be closely scrutinized, to avoid even the appearance of impropriety. Participants and potential donors should carefully familiarize themselves with M.G.L. c. 268A, the Conflict of Interest law. Donors must not exert undue influence in selling their property and it must be sold at a fair price in order to avoid a conflict of interest.

5.08: Post-completion Requirement

(1) Operation, Maintenance, and Reasonable Use Limitations. Property acquired or developed with Program assistance shall be operated and maintained in accordance with standards and guidelines of the Division. In accordance with the applicable program contract, participants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Program assistance as necessary for maintenance or preservation.

(2) Nondiscrimination. Property acquired or developed with Program assistance will be open to entry and use by all persons who are otherwise eligible regardless of race, color, national origin, sex, sexual preference, age or disability.

(3) Nondiscrimination on the Basis of Residence.

(a) Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems, or user fees is prohibited on the Project site unless this provision is waived by the Secretary.

(b) The Secretary will approve or deny all proposed fee or access limiting systems. Waivers will not be granted which are inconsistent with the Federal Land and Water Conservation Fund Act, P.L. 88-578, Section 6(f)(8), 16 U.S.C. § 4601-4. *et seq.*

5.09: Conversion and Reversion

(1) Conversion. Property acquired or developed with assistance from the Self-Help or Urban Self-Help Program shall be retained and used at all times for open space purposes in accordance with M.G.L. c. 132A, § 11, and St. 1977, c. 933. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation or

conservation purposes without the approval of the Secretary. Converted property shall comply with Article 97 of the Massachusetts Constitution and shall be replaced with land of at least equal fair market value and of reasonably equivalent usefulness. The Secretary may disapprove conversion requests or reject proposed property substitutions. Grant contracts, at the discretion of the Secretary, may be subject to specific performance.

(2) Reversion. Property acquired or improved with Program funds authorized by St. 1996, c. 15 shall be retained and used at all times for open space purposes in accordance with M.G.L. c.132A, § 11, as amended, or St. 1977, c. 933, as amended. In the event that the property ceases to be used, either in whole or in part, for such purposes, all interest in the property shall revert to the Commonwealth, unless the Secretary demands specific performance of the grant contract.

(a) Owners of property so acquired or improved shall notify the Secretary in writing of any change in use or potential change in use of the property that is inconsistent with said open space purposes. The owner shall have 90 days from the date written notice was received by the Secretary to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert. Upon receipt of written notice, the Secretary may review the circumstances of the property and determine that reversion of the property is not appropriate or essential to the protection of public open space, and find that the provisions of 301 CMR 5.09(1) shall apply.

(b) If the Secretary finds that a property acquired or improved with Program funds has ceased to be used for such open space purposes, the Secretary shall notify the owner of the property in writing of this basis. The owner shall have 90 days from the date written notice was mailed to the owner to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert.

5.10: Guidance Documents

The Guidelines or Guidance Documents referenced herein are available free of charge to municipalities upon request from the Division.

5.11: Severability

The provisions of 301 CMR 5.00 are severable, and if any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of the remainder of 301 CMR 5.00.

REGULATORY AUTHORITY

301 CMR 5.00: M.G.L. c. 21A, § 2; c. 132A, § 11; St. 1977, c. 933; St. 1987, c. 564, §§ 8 and 9; St. 1996, c. 15, § 2.

Formatting Note: 301 CMR 5.00 occupies pages 15 through 22 of 301 CMR EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS. (PAGES 23 THROUGH 42 ARE RESERVED FOR FUTURE USE.)

**OUTDOOR RECREATION
URBAN SELF-HELP PROGRAM
STRATEGIC URBAN RECREATION FUND
LAND & WATER CONSERVATION FUND
Application Step Procedures**

(Step 1.) Municipality requests Urban Self-Help application from the Division of Conservation Services *before purchasing land or before construction begins* (for all other projects). At this time, deadlines for filing applications should be ascertained.

(Step 2a.) Municipality files two copies of the complete application. *No Incomplete Applications Will Be Accepted, No Electronic Filings Will Be Accepted*

The following items must be included with the application:

- (a) Copy of municipal vote accepting the Conservation Commission (M.G.L. c.40 s.8c) and Park Commission (M.G.L.c.45 s.2) and current appointments to said Commissions.
- (b) Plot or survey plan of area adequately defining metes and bounds of project and USGS Locus Map showing Project Site and any adjacent or nearby public or quasi-public land.
- (c) Site Development Plans: services of a professional design firm are strongly recommended.
- (d) Cost Estimates: services of a professional design firm are recommended for renovation and development projects. DCS approved appraisals and closing costs are eligible for state reimbursement and should be included in your total project cost.
- (e) Professional appraisals for acquisition projects. (See USPAP and the Uniform Appraisal Standards for Federal Land Acquisitions.)
- (f) Evidence that a public meeting was held presenting the Project and that a response has been made to any opposition to the Project.
- (g) Copy of municipal vote and deed proving that property is permanently dedicated for park, playground, or recreation purposes. This is further explained in the DCS handout "Dedication to Conservation or Recreation Use and Boundary Map Requirements".
- (h) Evidence of public hearing on proposed project (copy of actual newspaper ad or actual posted announcement). Consider concentrating on local neighborhood participation by posting notices with tenants associations, in local grocery stores or with Community Development Corporations.
- (i) Open space/recreation plan approved by the Division and no more than five years old if not already on file with the Division or evidence that such a plan is underway and will be complete by the application completion deadline.
- (j) Any pertinent attachments required in application.

(Step 2b.) File with the Office for Commonwealth Development (OCD) for your community's Commonwealth Capital Score. Check OCD's web site at <http://www.mass.gov/oecd/comcap.html> for more information on the scoring process.

(Step 3.) Field examination is conducted by Division representative.

In emergency cases involving land acquisition in which the land must be acquired prior to approval action, the Director may grant permission to proceed with the Project provided a field examination has been completed and a complete preliminary application has been submitted to the Division. This clearance to proceed with the acquisition in no way obligates the Commonwealth to fund the Project. No permission to proceed will be given by the Division for construction projects prior to Project approval.

(Step 4) Interagency review and priority rating by the Division, Interagency Lands Committee, and the Office for Commonwealth Development. Consultations with the Commission, if necessary. Priority ratings will be assigned to each Project using the Open Project Rating System, which is based on needs identified in the current SCORP and OCD factors.

(Step 5) Preliminary application reviewed and approved with or without special conditions, or rejected by the Secretary.

(Step 6) Waiver request. In some extenuating circumstances a Participant may need to purchase the subject property prior to obtaining a selection decision from DCS. The Division may grant permission to proceed with the acquisition, provided that a site inspection has been completed and a complete Urban Self-Help application with all the necessary attachments listed in Step 2 above (including the appraisal reports) have been submitted to the Division. *This clearance to proceed with the acquisition in no way obligates the Commonwealth to fund the project.* If the project is not selected by DCS for funding, and the municipality has acquired it, it cannot be resubmitted in a subsequent grant round.

(Step 7) Project approval or Rejection. Final application, billing forms, State Standard Contracts, and Project Agreement for approved Projects sent to Participant. The Director may revise any of these documents from time to time. The current forms are available from the Division to any interested person at no charge. Funds are obligated by the Commonwealth upon execution of contract documents for approved Projects. Unsuccessful Applicants will receive an explanation of why the Project was rejected and recommendations, if any, regarding resubmission.

(Step 8a) Municipality votes to appropriate, expend from available funds, or borrow an amount equal to the total project cost stated in the application. A Municipality may vote to borrow funds in anticipation of state reimbursement prior to receiving agreement for reimbursement, but the borrowing cannot actually take place until final state approval has been received. Municipal vote for the total project cost may take place prior to Step 1 in the application process, but the Municipality must ensure proper compliance with the Urban Self-Help application procedures. Approval may be withdrawn if Municipality's vote fails or if Municipality exhibits lack of progress in obtaining this vote or in meeting time schedules established as part of approval conditions.

(Step 8b) Exclusive of borrowing situations, and if the community wishes, reimbursements may be re-appropriated back into the Participant's Conservation Fund or dedicated fund. Said authorization may be voted in the original article or submitted in subsequent Town Meeting or City Council votes; otherwise, reimbursements must be deposited into the General Fund as per Massachusetts General Law. Communities utilizing accounts funded by the Cape Cod Land Bank Act, other local land bank acts, or the Community Preservation Act, should consult with the Department of Revenue, Division of Local Services for guidelines.

(Step 9) Participant files all required permits, final construction plans, and specifications

(Step 10) Purchase takes place or construction starts after approval has been received from Town Meeting or City Council and the Executive Office of Environmental Affairs, Division of Conservation Services.

(Step 11) Billing Forms filed with the Division, along with required documentation. See *Request for Reimbursement and Billing Form Procedures* and *Quarterly Progress Report Requirements* on file with DCS. (Partial payments may be requested.)

(Step 12) All billing forms, Request for Reimbursements, and documents are reviewed for completeness and accuracy. (A final inspection of the project is conducted prior to final payment.)

(Step 13) Director reports to the Secretary and requests approval to make payments.

(Step 14) Invoice prepared and submitted for payment.

(Step 15) Participant receives reimbursement, typically via electronic transfer. **Applicants should review DCS Post Completion requirements regarding fees, user limitations, reversions, and conversions.**

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES**

Filing Deadline: October 1, 2004

(Electronic fillings will NOT be accepted)

For DCS Office Use Only:

Urban Self-Help # _____
Total Project Cost: \$ _____
Reimbursement Rate _____ %
Grant Request \$ _____
Approval Date _____
Grant Award \$ _____

**FY05 ANNUAL GRANT ROUND
PARK AND RECREATION PROJECTS
URBAN SELF-HELP, SURF, and FEDERAL LAND & WATER CONSERVATION FUND PROGRAMS
APPLICATION FORM**

1. **Municipality** _____ **Population (2000 U.S. Census):** _____

2. **Project Name:** _____

Type of Project:

☐ Acquisition – acreage _____ ☐ New Development ☐ Renovation

Previous Assistance: ☐ Yes ☐ No

Watershed: _____ County: _____

3. **Contact Person:** _____

Agency: _____

Address: _____

_____ Zip _____

Telephone _____ Fax _____

Email: _____

Please note: the contact person is the official representative for this project as authorized under item #16(b) of this application, usually **not** the chief municipal officer.

4. **Briefly describe the Project on ONE attached page.** Be certain to include any information that may affect the rating system highlighted below. (Copies available upon request.)

a.) Acquisition Projects:

- concise natural resource description including wildlife habitat, water resources, and soils
- number of acres being acquired
- if it is in a high growth or high density area
- rare species
- state designated Area of Critical Environmental Concern (ACEC)
- unique geologic or landscape feature
- historic or archaeological resource
- wetlands (include linear footage of land bordering lake, river or coastal beach)

b.) Development or Renovation Projects

- describe facilities being developed
- describe community needs
- acres dedicated as park land
- interpretive services, environmental education
- brownfield projects must submit 21E evaluation

c.) All Projects:

- accessibility for the disabled
- long-term detailed site maintenance/management plan that includes sources of funding
- link to other recreation or conservation sites
- water based recreation, (include linear footage bordering water resource)
- participation by any other governmental agency (state, federal, county) or private nonprofit
- cooperation with local board of tourism (chamber of commerce)
- regional or statewide facility:

- serves a regional population of 35,000 which reside within a radius of 25 miles
- serves one or more urban area residents living within one-hour driving radius
- parking for 100 vehicles for regional status
- parking for 200 vehicles for statewide status
- public transportation route
- provides adequate comfort stations and potable water outlets
- serves all age groups (for either regional or statewide status)

5. Proposed Funding:

The Urban Self-Help program is a *reimbursement* program. Grant recipients are reimbursed after invoices have been paid. **The total project cost must be raised or appropriated by the municipality shortly after project approval if it has not already been appropriated.** Costs incurred prior to grant approval are ineligible with the exception of design costs. Force account labor is also ineligible. Mention any *previous, pending or anticipated* financial assistance on this project. Refer to Urban Self-Help regulations (Section 5.07) for eligible cost details.

Total Eligible Project Cost: (Less non-eligible state share.) _____

Urban Self-Help:
(52-70% based on Equalized Valuation Per Capita, maximum of \$500,000) _____

Municipal Share:
(Community Development Block Grant, Land Bank, Community Preservation Act, etc.,
please specify in project description under #4) _____

Other: (i.e. private donation to community, fund raising, etc.) _____

Please indicate if you would accept federal funding at 50% reimbursement ☐ Yes ☐ No
(acceptance of L&WC funds may require additional information at selection)

Attach a one page description of the proposed project budget including:

- a. The source of all local funding including donations, Community Preservation Act (CPA) or Cape Cod Land Bank Act (LBA) funds. The CPA and LBA both require that a conservation restriction (CR) be held by a qualified holder who must be identified on this application.
- b. Description of the details of any donation, if applicable (be sure these funds are gifted to the community and earmarked for the project).
- c. Description of any other sources of funding including federal, state, municipal or nonprofit organizations. List these partners and describe their contribution. Not all sources of state and federal funds are compatible with DCS grant programs.

6. Project Type: Please indicate type of project, refer to the program's regulations for definitions (Sec 5:03), and to the list of required attachments found at the end of this application form to substantiate any "yes" answers. Indicate here whether:

- (a) ☐ Your municipality is an urban population center
- (b) ☐ Your project is of regional or statewide significance
- (c) ☐ Your project qualifies as a "small town" project

7. Is your community is one of extreme critical need? (please refer to regulations for definitions (Sec 5:03), Eligibility requirements (5:04 (5)), and to list of required attachments found at the end of this application.

☐ Yes ☐ No

8. Is your community within an 'Economic Target Area'

☐ Yes ☐ No

9. Commonwealth Capital Application

In order to encourage municipalities to implement land use practices that are consistent with smart growth, the Romney Administration has implemented a new incentive policy known as Commonwealth Capital for discretionary grant programs. The project rating systems for the Self-Help and Urban Self-Help programs have been modified, such that 20% of available points reflect a municipality's Commonwealth Capital Score. In order to receive a Commonwealth Capital Score, municipalities must apply directly to the Massachusetts Office for Commonwealth Development (OCD). Submit a Commonwealth Capital Application, with appropriate documentation, for your community, available online at: www.mass.gov/oed/comcap.html, to obtain your score.

Have you applied for a Commonwealth Capital Score?
letter to OCD.

☐ Yes **Submit OCD response, or copy of your cover**

☐ No **Date anticipated for submission:** _____

10. Describe outstanding leases, restrictions or other rights or interests held by others in the Project Site and enclosed copy of the same.

11. Is the property permanently dedicated for park, playground, or recreation purposes? (See Required Attachments #2.) If not, please submit draft dedication language for DCS review.

☐ Yes

☐ No

Total acres of Dedicated Park Land _____

12. Are fees currently charged or proposed for this facility? If yes, please attach a copy of the fee system. Charging fees is allowed subject to DCS approval. The site cannot be restricted to municipal residents only. If fees are charged based on residency, fees for nonresidents are subject to Section 5.08(3) of the Urban Self-Help regulations.

☐ Yes (copy attached)

☐ No

13. Municipal Open Space and Recreation Plan: Define how Project meets priority needs defined in Action Plan, specify any reference to the Open Space and Recreation Plan with a page number. Community must have an Open Space and Recreation Plan approved by DCS or submit draft of plan to be eligible to participate in grant programs.

14. Define how Project meets priority needs as defined in the Massachusetts Outdoors 2000!, the Statewide Comprehensive Outdoor Recreation Plan (SCORP) available online at www.mass.gov/envir/dcs and click on "Publications". Focus on the demand information for your region and the statewide and regional goals.

15. Check the following if applicable to Project:

☐ Yes ☐ No Prime Agricultural Lands (see Ex. Order #193)

☐ Yes ☐ No Barrier Beach

☐ Yes ☐ No Cultural, Historic, Archeological Site: Contact MA Historical Commission (617) 727-8470

☐ Yes ☐ No Endangered Species Habitat: Contact MA Natural Heritage Program (508) 792-7270

☐ Yes ☐ No Scenic Road Designation

☐ Yes ☐ No Scenic River Designation

☐ Yes ☐ No Wetland Designation

- ☐ Yes ☐ No 100 Year Floodplain
☐ Yes ☐ No State Designated Area of Critical Environmental Concern (ACEC)
☐ Yes ☐ No Environmental Intrusion, i.e. overhead power lines (must be buried), safety hazards.
☐ Yes ☐ No Brownfield – 21E evaluation
☐ Yes ☐ No Environmental Justice community/neighborhood
☐ Yes ☐ No Acquisition involving Relocation of Residents, Tenants, or Businesses.
☐ Yes ☐ No Negotiated Sale
☐ Yes ☐ No Purchase and Sales Agreement or Agreed Price Amount \$ _____
Appraisal #1: Appraiser: _____ Valuation: \$ _____
Appraisal #2: Appraiser: _____ Valuation: \$ _____

16. Check if the following permits are required:

- ☐ Yes ☐ No U.S. Army Corps of Engineers (404 or Rivers and Waterways)
☐ Yes ☐ No MA: DEP Division of Wetlands & Waterways (617/292-5518)
☐ Yes ☐ No U.S. Coast Guard
☐ Yes ☐ No U.S. Dept. of Agriculture (Zoos)
☐ Yes ☐ No C. 131 s. 40 Wetlands (municipal conservation commission)
☐ Yes ☐ No Commonwealth Tidelands (CZM 617/727-9530)
☐ Yes ☐ No MEPA Review (301 CMR 11.00: MEPA Regulations) (617) 727-5830.

IMPORTANT NOTICE

If any of the above permits are required, the permit or application for the permit must be submitted. Should the project be selected for funding, the permit will be required as part of the final application.

17. Attach certification of:

- a. Applicant community's legal authority to apply for the grant and to finance and construct the proposed facilities and the **Chief Executive Officers legal authorization to execute contracts**. This is a resolution, motion or similar action that has been duly adopted or passed as an official act of the community's governing body which authorizes the filing of the applications, including all understandings and assurances contained therein; and
 b. Authorization from chief municipal officer identifying individual named on the first page of this application who acts as official of municipality in connection with the application and who will provide such additional information as may be required (See Urban Self-Help Regulations 5.04:(6).

Date

Signature of Chief Municipal Officer

Name and Title (Typed)

Duration of Term

Mailing Address: _____

Telephone: _____

REQUIRED ATTACHMENTS

1. **Commonwealth Capital Application** – Submit copy of cover letter to confirm that your community has applied for this rating, or a copy of OCD's response and your score. The Commonwealth Capital Application, as well as additional guidance documents and information about Commonwealth Capital, is available on Commonwealth Development's website at: www.mass.gov/ocd/comcap.html.
2. **Boundary Plan of Site** (Survey or Plot Plan with adequate metes and boundary descriptions). The boundary plan submitted with the project application becomes the permanent protected boundary for the site. Acceptance of state or federal financial assistance obligates the community to permanently protect the project site. The Project Site is subject to Article 97 of the Constitution of the Commonwealth. Since the land is permanently protected, any boundary encroachment, change to a non-recreation use, or lack of basic maintenance may constitute a conversion of use. In the event that the property ceases to be used for such purposes, all interest in the property shall revert to the Commonwealth Owners of property so acquired or improved shall notify the Director in writing of any change in use or potential change in use of the property that is inconsistent with said open space purposes. The owner shall have 90 days from the date written notice was received by the Director to present satisfactory evidence that the basis for reversion has been cured, in which case the property shall not revert. Upon receipt of written notice, the Director may review the circumstances of the property and determine that reversion of the property is not appropriate or essential to the protection of public open space, and find that the provisions of 301 CMR 5.09(1) shall apply.
3. **Copy of municipal vote and deed proving that property is permanently dedicated for park, playground, or recreation purposes.** This is further explained in the DCS handout "Dedication to Conservation or Recreation Use and Boundary Map Requirements".
4. **Evidence of public hearing** on proposed project (copy of actual newspaper ad or actual posted announcement). Consider concentrating on local neighborhood participation by posting notices with tenants associations, in local grocery stores or with Community Development Corporations.
5. **USGS Locus Map** showing Project Site and any adjacent or nearby public or quasi-public land.
6. **Photographs** of Site, existing buildings.
7. **Acquisition Projects: Two appraisal reports** prepared in accordance with DCS requirements. Note that federally funded projects will be required to meet federal appraisal standards found at www.usdoj.gov/enrd/land-ack/yb2001.pdf. One copy of each report is sufficient.
8. **Site Development Plans:** services of a professional design firm are strongly recommended.
9. **Cost Estimates:** services of a professional design firm are recommended for renovation and development projects. DCS approved appraisals and closing costs are eligible for state reimbursement and should be included in your total project cost.
10. **Copy of municipal vote accepting the Conservation Commission (M.G.L. c.40 s.8c) and Park Commission (M.G.L. c.45 s.2) and current appointments to said Commissions.**
11. All applicants should request comments on their projects from the Massachusetts Natural Heritage and Endangered Species Program (MNHESP at: www.mass.gov/dfwele/dfw/nhesp/nhesp.htm), and the Massachusetts Historical Commission (MHC at: www.sec.state.ma.us/mhc/). Comments from the regional planning agency are also helpful. These review letters must be requested by the filing deadline, but the responses will be accepted anytime before funding decisions are made in September.

SUPPLEMENTARY DOCUMENTS ATTACHED AS NECESSARY

1. Copies of current leases, restrictions, or other rights or interests held by others in the property.
2. Fee Schedule.
3. Any necessary permits or applications for permits.

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SAMPLE MUNICIPAL VOTE

Each community should draft its warrant article with the guidance of municipal counsel. The form that these articles take will vary with the means of acquisition, source of funding, type of land, etc. All articles should include the following elements:

- I. Authorization to expend an amount equal to the full acquisition and/or development cost of the project. (All DCS grant programs are *reimbursement* programs, not match programs; therefore, the total project cost must be raised or appropriated through current tax levy or borrowed; project bills paid by the municipality and then a reimbursement request is made to DCS for the grant amount.)
- II. Indication of the source of funding (Conservation Fund, Community Preservation Act Fund, Land Bank Fund general fund, borrowing). M.G.L. Chapter 44, sections 7, 8C, and 12(a) on Municipal Indebtedness, allows cities and towns to borrow in anticipation of reimbursement. It is strongly recommended that the warrant article is prepared with the advice of town counsel, treasurer and accountant to ensure that the appropriate section is noted in the warrant article. These sections permit the municipality to borrow in anticipation of a grant and require that a grant agreement be executed before the treasurer actually obtains the borrowed amount. This assures DCS that the town has 100% of the total project cost, and assures the town that the project need not be completed if the proposal does not receive grant assistance. For further advice, please contact the Department of Revenue, Division of Local Services at (617) 626-2300.
- III. Indication that land is being acquired for conservation and passive outdoor recreation purposes (Chapter 40, Section 8c) or acquired and/or developed for active recreation purposes (Chapter 45, Section 3, for example) and will be in the care and control of the appropriate commission or department.
- IV. Authorization for the conservation commission or recreation department to seek reimbursement under the specific DCS grant and enter any necessary contracts thereto.
Self-Help Act: Chapter 132A, Section 11
Urban Self-Help: Chapter 933 Acts of 1977, as amended
Federal Land & Water Conservation Fund: P.L. 88-568, 78 Stat 897
- V. If a taking is involved in an acquisition project, the conservation commission or recreation commission must, in writing, request the selectmen or city council to take the property via eminent domain.
- VI. Reference to the Community Preservation Act (CPA) or Cape Cod Land Bank Act (LBA), if these funds were used for the purchase of the property. CPA or LBA articles must include authority to convey a perpetual conservation restriction to a qualified holder.

The following is a sample vote authorizing the acquisition of Self-Help land (please refer to IV above for the appropriate grant program or programs). This is intended only as a point of reference. **Municipal Counsel should always be consulted when drafting Town Meeting warrant articles or City Council orders.** The draft article or order must be submitted to DCS for review prior to the Town Meeting or City Council vote

Sample for Self-Help Conservation Acquisition Project

To see if the CITY/TOWN will vote to appropriate, and authorize the Treasurer with the approval of the Selectmen [describe method of appropriation and/or borrowing according to M.G.L. Chapter 44, note particularly Section 8C], to borrow the sum of \$TOTAL PROJECT COST, for the purpose of purchasing for conservation and passive recreation purposes, by eminent domain or negotiated purchase or otherwise, a certain property together with buildings thereon, known as the PROPERTY NAME consisting of XXX acres, more or less, as shown on a plan entitled "Plan of Land in MUNICIPALITY made by SURVEYING FIRM dated XX/XX/XX"; that said land be conveyed to said CITY/TOWN under the provisions of Massachusetts General Laws, Chapter 40, Section 8c, and as it may hereafter be amended and other Massachusetts statutes relating to Conservation, to be managed and controlled by the Conservation Commission of MUNICIPALITY, and the Conservation Commission be authorized to file on behalf of MUNICIPALITY any and all applications deemed necessary for grants and /or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, Section 11) and/or any others in any way connected with the scope of this Article, and the CITY/TOWN and the Conservation Commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of MUNICIPALITY to affect said purchase.

Projects Funded through the Community Preservation Act or Cape Cod Land Bank Bill

The Community Preservation Act (CPA) and the Cape Cod Land Bank Act (LBA) state that land acquired with these funds are to be bound by a permanent restriction. Since a community cannot hold a conservation restriction against itself, a Chapter 184 §31 conservation restriction limiting the use of the interest to the purpose for which the land was acquired (conservation and passive recreation) must be granted to a qualified holder.

Conveying a conservation restriction over “parkland” normally would trigger the formal “Article 97” disposition process. However, it is the opinion of EOEA and the Massachusetts Land Trust Coalition Attorney Referral Panel that: “If a municipality acquires property under the CPA statute, it is required to impose a restriction on the property as a matter of law and thus the imposition of the restriction should be considered part of an integrated plan for dealing with the property. Therefore, the imposition of the restriction should not be considered a “disposition” of an interest in the property within the meaning of Article 97.”¹

Points to Remember:

1. It is preferable for the municipality to vote to impose the restriction at the same time that it votes to acquire the property, and that the purchase of the property and conveyance of the restriction be a simultaneous closing.
2. As long as a restriction is recorded **after** the recording of the deed of acquisition (even if immediately after), the unrestricted value (and therefore higher value) of the property is used for funding determinations in DCS grant programs.
3. The fact that the funding statute *requires* the restriction may mean that a party seeking a charitable contribution deduction in connection with a bargain sale of property may not be able to use the unrestricted value of the property in calculating the tax benefit.
4. The “proceeds” clause of the conservation restriction must provide that the municipality (as the fee owner) receives all of the proceeds of an extinguishment or taking, and the holder of the conservation restriction receives none of such proceeds. In the event that the land ever is converted to non-conservation use, the municipality would be responsible for replacing the converted property with land of equal or greater monetary value and conservation use and described in the Program Regulations. Applicants should consult with DCS for guidance on drafting conservation restrictions for the appropriate language.

Sample Vote Language for Community Preservation Act or Cape Cod Land Bank Projects

To see if the Town will vote to raise, borrow and/or appropriate \$Total Project Cost for the acquisition by gift, negotiated purchase or eminent domain of a parcel of land of approximately __ +/-acres owned by OWNER as described on Assessors Map __, Parcel __, to be managed and controlled by the Conservation Commission of the Town of XXX in accordance with Chapter 40, Section 8C for conservation and passive recreation purposes, and to meet said appropriate with funds transferred and/or borrowed in accordance with M.G.L. Chapter 293, the Community Preservation Act [or Cape Cod Land Bank Act], and to authorize the Treasurer, with the approval of the Board of Selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by M.G.L. Chapter 44, or any other enabling authority, and that the Town Manager [or Board of Selectmen] be authorized to file on behalf of the Town of XXX any and all applications deemed necessary under the Self-Help Act (M.G.L. Chapter 132A, Section 11) [or LWCF or USH] or any other applications for funds in any way connected with the scope of this acquisition, and the Town Manager and the Board of Selectmen and the Conservation Commission be authorized, as they deem appropriate, to enter into all agreements and execute any and all instruments including the conveyance of a perpetual conservation restriction in accordance with M.G.L. Chapter 184 as required by Section 12(a) of Chapter 44B or Chapter 293 Section 10 of the Acts of 1998 as amended, as may be necessary on behalf of the Town of XXX to affect said purchase. Said conservation restriction may be granted to the [Name of Grantee] or any other organization qualified and willing to hold such a restriction.

¹ Attorney Doug Bialecki and the Attorney Referral Panel of the Massachusetts Land Trust Coalition

**SELF-HELP and URBAN SELF-HELP PROGRAMS
FEDERAL LAND AND WATER CONSERVATION FUND
APPRAISAL REPORT GUIDELINES**

If your project involves an acquisition, the appraisal reports are absolutely critical to the success of your project. All properties to be acquired must be appraised in accordance with the Division's requirements by a qualified, independent and disinterested appraiser. The reports must be submitted along with the preliminary application by the grant round application deadline. If your project is selected for funding, you should wait until DCS has certified a value based on the appraisal reports before you begin formal negotiations with the owner. Because these reports determine the possible grant award, and because they are reimbursable under the Self-Help and Urban Self-Help programs, it is to your advantage to make sure that they are acceptable reports in the early stages of your project. The appraisal used to certify a value must not be more than a year old, when measured from the effective date of the appraisal to the date the transaction is closed. Attached are the appraisal standards covering both the required documentation, as well as the type of report necessary based on the estimated value of the property.

1. **Number and Type of Appraisal Reports Required:** If the subject property is worth more than \$75,000, or if it is to be purchased from another public agency, or involves an exchange of real property, two full appraisal reports submitted by two different appraisers are required. For property worth between \$25,001 and \$75,000, one full appraisal and one limited appraisal is required. For property worth between \$1.00 and \$25,000, two limited appraisals are required. Neatness counts. A full narrative appraisal is a comprehensive analysis, substantiated by documented market data, of the value of a property. Full appraisals must be bound, in book-fashion, in the left margin, in a durable cover with an identification of the property on the cover page. The paper must be a good grade bond of size 8 1/2"x 11". All pages must be numbered consecutively, including all exhibits, and each important heading must be shown in the Table of Contents. Special note for federally funded projects: proposals submitted to the National Park Service for federal assistance under the Land and Water Conservation Fund must also comply with the Uniform Appraisal Standards for Federal Land Acquisitions. These standards are available at www.usdoj.gov/enrd/land-ack/yb2001.pdf. If your project is selected for federal funds, you may be required to revise your appraisal reports.

2. **The Appraiser's Scope of Practice:** The appraiser must be licensed and/or certified by the Massachusetts Board of Registration of Real Estate Appraisers, and have the appropriate license or certification for the type of land that is appraised. In addition, the appraiser must be certified in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The appraiser should supply you with this professional information at your request. Often the project will require a state certified general real estate appraiser. The following is an excerpt from the state regulations for the Board of Registration of Real Estate Appraisers.

264 CMR 7.00 SCOPE OF PRACTICE

7.01: Scope of Practice

(1) State Licensed Real Estate Appraisers. State-licensed real estate appraisers may appraise non-complex one-to-four unit residential property having a transaction value less than \$1,000,000 and complex one-to-four unit residential property having a transaction value less than \$250,000.

State-licensed real estate appraisers may appraise vacant or unimproved land that is utilized for one-to-four family purposes, and where the highest and best use is for one-to-four family purposes.

State-licensed real estate appraisers may not appraise subdivisions wherein a development analysis/appraisal is necessary and utilized.

In addition state-licensed real estate appraisers may appraise properties as specified by the Federal Financial Institution Regulatory Agencies.

(2) State-Certified Residential Real Estate Appraisers. State-certified residential real estate appraisers may appraise residential properties with one-to-four units without regard to transaction value, as well as complex one-to-four unit residential property without regard to transaction value.

State-certified residential real estate appraisers may appraise vacant or unimproved land that is utilized for one-to-four family purposes, and where the highest and best use is for one-to-four family purposes.

State-certified residential real estate appraisers may not appraise subdivisions wherein a development analysis/appraisal is necessary and utilized.

In addition, state-certified residential real estate appraisers may appraise properties as specified by the Federal Financial Institution Regulatory Agencies.

(3) State-Certified General Real Estate Appraisers. State-certified general real estate appraisers may appraise all types of real property. Regulatory Authority: 264 CMR 6.00 (promulgated 6/28/96); M.G.L. c. 13, s. 92; M.G.L. c. 112, §. 173-195.

3. **The Appraiser's Contract:** Include the appraisal standards as a condition of the appraiser's contract. Consider withholding final payment to the appraiser until DCS accepts the report.
4. **Common Comparable Sales Problems:** Reports usually contain comparable sales and the examples offered should be just that: comparable. The locations should be similar, preferably the same town. If they are not, the narrative must explain why that particular sale is still comparable. The highest and best use and market situations of the comparable sale should be the same as the subject property. These sales must also represent arms length transactions - generally municipal transactions are not arms length.
5. **Common Valuation Problems:** The highest and best use must reflect a market situation, and typically "open space" or "conservation" is not a marketable situation. If the subject property cannot support development, perhaps it would be attractive to abutters who wish to add to their own holding (assembly) or the property may have some timber value, or if the property is part of a larger parcel, a before and after value should be determined. Any restrictions placed in the deed by the grantor (seller) can possibly lower the value of the property. Special Note: appraisals submitted as part of a conversion proposal must value the converted property as if it were developable, unencumbered by any conservation or recreation restrictions.
6. **Complicated Circumstances:** Appraisals should be analytical narrative reports following current professional appraisal standards. All components of the report such as introductory and supporting data, valuation analysis, limiting conditions, and certifications should meet these standards. If necessary, the Division of Conservation Services will furnish supplementary specifications which delineate additional required data in the appraisal of highly specialized properties or properties to be acquired under unusual circumstances.
7. **Limited Appraisal Report:** A limited appraisal is a statement from a qualified appraiser that a property is worth a given amount. It can be based upon the appraiser's knowledge of land values, and should be substantiated by some documented data such as comparable sales, timber cruiser's report, etc. Limited appraisals should include a short statement of the appraiser's experience and qualifications, a brief description of the factors considered in valuing the property and the means by which the appraiser concluded the value of the parcel. The Division of Conservation Services reserves the right to request additional information if it deems the limited appraisal to be inadequate. Please see additional notes on page 8.
8. **Eminent Domain Taking:** Clients should notify the appraiser if eminent domain taking is contemplated or a possibility. All participants must provide for fair and equitable treatment of persons and businesses to be displaced as a result of the Project. Participants must abide by the requirements of M.G.L. c. 79A or c. 80A (both pertain to eminent domain takings), as amended. Titles II and III of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) must be complied with if the participant is seeking concurrent federal financial assistance or if subsequent development stages are contemplated with the use of any federal funds.
9. **Review Appraisal:** Generally, when appraised values are within 10% of one another there will be no need for further appraisal resolution providing both reports are found to be adequate. Appraisers may be asked to reconcile their value differences, however, when the values differ by more than 10%. When, in the opinion of the Director, the value of the property remains in doubt, further appraisals may be required to reach a value conclusion. The resolution of value may be accomplished through the performance of entirely new appraisals or through the engagement of an appraiser as qualified above for the purpose of reviewing existing appraisal reports and certifying a final value conclusion. This same procedure also applies to limited appraisals deemed inadequate by the Director, or which differ by more than 10% in value.

APPRAISAL REPORT REQUIREMENTS

I. INTRODUCTION

1. Title Page

- a. Land area of subject property
- b. Street number and town location
- c. Name of property owner(s)
- d. Effective date of appraisal
- e. Name and address of appraisers

2. Table of Contents - List all essential items in the report.

3. Owner's Property Inspection Certificate

The appraiser must invite the landowner or his or her representative to accompany the appraiser during inspection of the property. To allow the landowner time to make the necessary arrangements, the invitation should be made appropriately in advance of the planned inspection date. Reasonable efforts should be made to include the landowner or his or her representative in the inspection. The appraiser should consider any information the landowner may provide which is relevant to the issue of the value of the property inspected. However, the appraiser must use his or her best judgement as to the usefulness of any information provided by the landowner. Include the Certificate stating that the landowner or designated representative has participated or declined to participate in the field inspection of the property in the addenda of the appraisal report. See Certificate form on page 9 of these requirements.

4. Statement of Limiting Conditions

The appraiser should state that he/she assumes the title to be marketable, that he/she assumes no responsibility for legal matters, and that all data furnished by others are presumed correct. The appraiser should also mention any other assumptions he/she has made.

5. Summary of Important Facts and Conclusions

II. FACTUAL DATA

1. Purpose of Appraisal and Definition of Value(s) required, and reason for the appraisal.

2. Identification of the Property

Legal description of the whole tract and that to be acquired. Properly identify the area (plot plan, etc.)

3. Area and Neighborhood Analysis

The appraiser should present all findings and conclusions about the external influences (social and economic) that could affect the value of the subject. The presentation should be analytical and related to the valuation problem at hand. Avoid itemization of facts and figures not pertinent to value. Include: (Items d, e, and f required for appraisals of developable land only).

- a. Description of Community (rural, suburb, resort, etc.)
- b. Ten-year population trend
- c. Reasons for trend, i.e., new industries, outward migration, etc.
- d. Rate of construction activity in town
- e. Number of bona fide building permits issued in past five years, and those pending, for type of development considered for the subject property
- f. How many lots per year could be absorbed?
- g. Utilities available in area
- h. Attitude of town officials toward development
- i. Master Plan for town?
- j. Immediate neighborhood - dominating influences and detrimental factors?

4. Area Map

Must indicate location of subject property as exactly as possible (a state highway map is suggested)

5. Location and Neighborhood Map

Must show roads leading to subject to facilitate inspection by review appraiser (a U.S.G.S. topographic map is suggested)

III. PROPERTY DATA

1. Site Description

- a. Total land area and brief description of improvements
- b. Total acreage under appraisal
- c. Shape of parcel and bordering properties
- d. Total street frontage
- e. Type of land - field, wooded, ledge, marsh, etc.

- f. Brooks, rivers, etc.
 - g. Soil description and analysis from U.S.D.A. Soil Survey
 - h. Utilities available to site (how far from sewer/water lines)
 - i. If no town sewer, will property perc?
 - j. Include perc. test results, if available
 - k. If no town water, will town allow new wells?
 - l. Check possibility of fertilization contamination of wells if land has been farmed
 - m. Easements
 - n. Gravel, loam, timber, etc. - commercial value? A statement must be made concerning the existence or nonexistence of mineral deposits, loam and timber, having a commercial value.
 - o. Site Plan (adequate for eminent domain takings if necessary)
2. Exhibits - May be placed in the body or Addenda of the report at the discretion of the appraiser.
- a. Soil Map
 - b. Topo map on which the boundaries of subject are superimposed
3. Improvements and Conditions
This description may be by narrative or schedule form and must include dimensions, cubic and/or square foot measurements, and where appropriate, a statement of the method of measurement used in determining rental areas such as full floor, multi-tenancy, etc. Site and Improvements Analysis will show the appraiser's findings from inspection of the site and buildings, including an indication of both positive and negative features that influence value. This discussion should set out succinctly the basis for the adjustments and/or deductions made by the appraiser in applying the several alternative analytical approaches to value estimation.
4. Equipment
This must be described by narrative or schedule form and must include all items of equipment and their state of cannibalization. The current physical condition and relative use and obsolescence must be stated for each item or group appraised, and whenever applicable, the repair or replacement required to bring the property to useable condition. Any related possessions or equipment, such as tenant trade fixtures, which are not attached or considered part of the realty, must be separately inventoried. Where applicable, these detachable or individually owned items must be separately valued.
5. History
State briefly the purpose for which the improvements were designed, dates of original construction and major renovation and/or additions; include, for privately owned property, a ten-year record for each parcel, of all sales and if possible, offers to buy or sell, and recent lease(s); if no sale took place in the past ten years, include a report of the last sale. The history should include parties to the transaction, dates of transfer, and consideration paid. If the property has been owned by the present owner for more than ten years, the appraiser should so state.
6. Assessment
Current assessed valuation (state if property is under M.G.L. c. 61, 61A or 61B) tax rate and annual tax bill. If the property is not taxed, the appraiser must estimate the assessment and probable taxes if property were placed on the tax rolls.
7. Insurance
Give the estimated rate per thousand and the annual cost of adequate insurance coverage (not necessarily present coverage). Only applicable on income approach.
8. Zoning
- a. Zoning of subject property, including dimensional requirements
 - b. Wetlands if applicable; floodplain regulations, overlay districts; water resource of acquire protection districts.
 - c. Include pertinent section from by-laws, if possible (in Addenda)
 - d. Copy of subdivision control law or excerpts if applicable (in Addenda)
 - e. If property is not zoned, state what the zoning probably would be, and if rezoning is imminent, discuss further.

IV. ANALYSIS AND CONCLUSIONS

1. Highest and Best Use
- a. The report must state the highest and best use that can be made of the property as vacant and with existing improvements and where applicable machinery and equipment for which there is a current market. In the appraisal of vacant land, the terms "highest and best use" and "feasibility" should be synonymous and foremost in the appraiser's thought process.
 - b. Assuming the highest and best use of undeveloped land is for residential subdivision (based on an analysis of all the preceding data), the narrative should be accompanied by a subdivision sketch showing the number of sites the tract would yield. While it need not be prepared with the exactness of a surveyor's plan, the sketch should show an outline of the number of lots which could be subdivided and clearly indicate those areas unsuitable for development because of wetlands, ledge, severe slope, etc.
 - c. A study of the zoning should reveal, and the report should discuss the following information:
 - (1) Are pork chop lots, cluster development, condominiums, etc. allowed?
 - (2) Is zero lot line development permitted?

- (3) Would a higher lot price for buildable land result if non-buildable land were designated as permanent open space?
 - (4) Would a greater net value result from sales of over-sized lots utilizing only existing street frontage?
 - d. Will the town pay for extension of sewer/water lines to site?
 - e. Acceptability of on-site sewer, water facilities.
 - f. Value of gravel or any other minerals or timber having commercial value on site.
 - g. Special requirements of Planning Board and/or Conservation Commission.
 - h. Number of lots that could be sold per year/total sell-off time.
 - i. If the estimate of highest and best use is for a use not permitted under the zoning, the appraiser must demonstrate a reasonable probability for a change in zoning for such use.
2. The Appraisal Process
- a. Standard definitions
 - b. If both Cost of Development Approach and Direct Sales Comparison Approach have not been used, in valuing land, why? If Income, Cost, or Sales Comparison Approaches have not been used in valuing improved property, why?
3. Valuation of Vacant Land Cost of Development Approach
- a. See Highest and Best Use section
 - b. Cost figures should be confirmed with local developers and professionals and, if deemed necessary, and engineering report should be included.
 - c. Local fees and procedures should be checked (e.g., tap-in fees, park-land provisions, etc.)
 - d. Extreme care must be exercised in estimating annual cash flow (Front end costs may make the use of averages inappropriate)
 - e. The discount rate must be supported by the market and equated to the risk involved. The risk rate in land development is generally higher than for income-producing real estate.
 - f. The appraiser must allow for the land developer's profit i.e., return on investment. This may be expressed as a percentage mark-up of original cost or a percentage discount of final selling prices.
 - g. Retail lot prices (by lot type if more than one category) should be supported by a comparable sales table. In valuation assignments relative to small parcels of land or approved building lots, the primary method of appraisal must be the Direct Sales Comparison Approach provided that truly comparable sales can be found. In appraisals of large parcels, it is highly unusual to find truly comparable acreage sales and, therefore, to make meaningful comparisons between acreage sales for such variables as street frontage, topography, development cost, existence of wetlands, etc. Therefore, in appraising large parcels of land with definite development potential, the cost of Development Approach should be relied upon and closely supported by a value range arrived at through use of comparable but somewhat dissimilar acreage sales. The most reliable method of valuing unbuildable land is through use of sales of comparable unbuildable land.
4. Direct Sales Comparison Approach
- a. Comparable sales (lots and acreage) should be summarized including perimeter sketches (include in Addenda)
 - b. A comparable sales map should be included
 - c. Sales should be presented in table form, showing adjustment for time
 - d. Each sale must be discussed in detail in the narrative including such factors as:
 - (1) time
 - (2) location (desirability, view, etc.)
 - (3) zoning
 - (4) frontage
 - (5) topography (including soil type)
 - (6) utilities
 - (7) cost of extending or installing utilities
 - (8) financing (mortgage back, etc.)
 - (9) contingency sale based on future development of individual lots
 - e. Sales from neighboring towns may be used if necessary, providing adjustments are made for market characteristics, etc.
5. Valuation Improved Properties
- a. Cost Approach: This approach must include calculations of reproduction or replacement cost of the improvement(s) and state the source, (book and page or computer printout, if a national cost service), of all figures used. The dollar amounts of physical depreciation and functional and economic obsolescence or the omission of same must be explained in narrative form. Depreciated costs new of improvements should then be added to a land value, supported by adjusted comparable land sales, and an appropriate developer's profit to indicate the value of the appraised property.
 - b. Income Approach: This approach must include adequate market data to support each of the costs, rents, and capitalization or discount rates used, and must be arranged in detailed form to show at least 1) estimated gross rent

or income; 2) allowance for vacancy and collection loss; 3) an itemized estimate of total expenses, 4) net operating income. N.O.I. must be capitalized at an appropriate overall rate (with market support) into an indicated market value. Investment properties may (also) require a Discounted Cash Flow Analysis, reflective of the requirements of investment/buyers in the current market.

c. Direct Sales Comparison Approach: All comparable sales used must be confirmed by the buyer, seller, broker, or other party having knowledge of the price, terms, and conditions of sale. Each comparable must be explained and adjusted in relation to the subject property to indicate the reasoning behind the appraiser's value estimate as indicated by this approach. Adjustments for time, location, size, age and condition and terms of sale and financing, should be included as well as the conditions of each sale. Photographs of comparable sales are required.

V. VALUE SUMMARY - VACANT LAND VALUATIONS

1. The estimate of value arrived at by means of the Development Approach should be compared on a per acre basis with the value arrived at by the Direct Sales Comparison Approach.
2. If the values do not closely agree, the reason for the divergence should be explained fully.

VI. CORRELATION AND FINAL VALUE ESTIMATE - IMPROVED PROPERTY VALUATION

The appraiser must interpret the values indicated by each approach, and must state his reasons why one or more of the conclusions reached are indicative of the market value of the property.

1. Less than Fee Acquisitions

Where the appraisal is for determination of the value of less than fee interests in land (e.g. conservation restrictions or easements), the appraiser must determine the value of this interest by use of the before and after method. The appraiser must fully detail the analysis of the highest and best use of the subject property without the restriction or easement, and clearly explain any changes in the highest and best use after imposition of the restriction or easement.

2. Severance Damages

If the property being appraised is a partial acquisition or taking, or is a separate parcel but physically contiguous to other land of the owner, or is under the same ownership but physically non-contiguous to the other land of the owner (but which may add value to the non-contiguous parcel, e.g., by providing access to a body of water), severance damages must be fully described and discussed. The method of value estimation must be the before and after method. The amount of the severance damages must be determined mathematically as well as described in narrative form.

3. Enhancement

The appraiser must investigate and determine whether the acquisition will enhance the value of the remaining property of the owner. If so, the method of value estimation must be the before and after method. The Report must set forth the enhancement value separately, with a full discussion and analysis of the factors giving rise to the enhancement.

VII. CERTIFICATION OF APPRAISER

1. He/she has personally inspected the property.
2. He/she has no present or contemplated interest in the property.
3. Appraiser's opinion of the market value of the property giving the date of the valuation, the amount of the valuation, the appraiser's signature, and the date the appraisal report was submitted.

VIII. REQUIRED EXHIBITS IN REPORT OF ADDENDA

(Any or all items may be placed in the body of the report at the discretion of the appraiser.)

1. Comparative sale data map - showing location of comparable sales used in appraisal.
2. Location map - showing locus of the subject property and neighborhood and area involved.
3. Plot plan and/or floor plan if appropriate - These plans can help the viewer visualize the written description of the subject property and both positive and negative features. Wetlands and flood plain maps if appropriate.
4. Adjustment chart or graph - showing comparable sales adjusted to the subject by those factors of comparability.
5. Photographs - Pictures must show at least the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. When a large number of buildings are involved, including duplications, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as the page facing the discussion or description that the photographs concern. All graphic material must include captions.
6. Owner's property inspection certificate.
7. Appraiser's qualifications.

Notes on Limited Appraisal Reports

A limited appraisal report is a brief description of the subject property to include physical characteristics, present use, zoning, public utilities associated with the land, deed restrictions, and any other pertinent information. A limited report includes:

1. A legal description of the real property to be acquired and a plat.
2. At least a 5-year history of conveyances (sales and transfers), including parties to the transactions, dates of purchase, and amounts of consideration.
3. An analysis and statement of the property's highest and best use.
4. Supporting data, including two or three comparable real property sales, a brief analysis of those sales, and a map showing their locations relative to the land acquired.
5. The appraiser's certification and signature.
6. The date the value estimate applies.
7. A statement of the appraiser's experience and qualifications.
8. A signed Owner's Property Inspection Certificate (see page 8).

Sources And References

These appraisal specifications are based on material from the following sources:

1. Appraisal Specifications of the U.S. Government
2. Appraisal Specifications of the Commonwealth of Massachusetts Department of Agriculture's APR Program.
3. The Internal Revenue Service Tax Appraisal Regulations as published in the Federal Register, December 31, 1984.
4. EOEA Land Acquisition Policy -- Appraisals dated September 1, 1995.
5. Federal Land and Water Conservation Fund Grants Manual Chapter 675.2.6.B.
6. Uniform Standards of Professional Appraisal Practice, 1993.
7. Uniform Appraisal Standards for Federal Land Acquisitions. These standards are available at www.usdoj.gov/enrd/land-ack/yb2001.pdf. If you project is selected for federal funds, you may be required to revise your appraisals.

OWNER'S PROPERTY INSPECTION CERTIFICATE

1. _____
Name(s) of Supposed Owner(s) Telephone Number with Area Code

Address

Town/City State Zip Code

2. Please check appropriate line

_____ I wish to accompany the appraiser on an inspection of my property.

_____ I wish to have my representative accompany the appraiser(s) on an inspection of my property. (Please fill in Item 3.)

_____ I do not wish to accompany the appraiser(s) on an inspection of my property.

3. _____
Name of Authorized Representative Telephone Number with Area Code

Address

Town/City State Zip Code

4. The following individuals and/or entities occupy the premises in accordance with an agreement as indicated (lease, life estate, etc.):

a. _____ b. _____
Name of Individual or Entity Name of Individual or Entity

Occupied Premises Occupied Premises

Type of Agreement Type of Agreement

5. I certify that I have given the above-referenced tenants or occupants notice of the appraiser's inspection of the property.

Name(s) of Supposed Owner(s)

6. I hereby authorize the appraiser to enter and inspect the property, after reasonable notice, for the purposes of preparing an appraisal.

Owner's Signature Date

OUTDOOR RECREATION PROJECT SELECTION SYSTEM
Massachusetts Urban Self-Help Program
Massachusetts Strategic Urban Recreation Fund
Federal Land & Water Conservation Fund

In order to distribute limited grant funds among an overwhelming number of applicants, a project selection system has been developed for conservation land acquisition projects. The selection system includes an interagency review and rating of each project, and an evaluation of the applicant community's commitment to sustainable development criteria developed by the Office for Commonwealth Development. The rating system considers demographic, social, environmental and project quality factors in order to identify those projects which best protect natural resources in communities which have the greatest need for financial assistance and which have made efforts to implement their open space plans in coordination with local planning for sustainable growth.

Interagency Review

DCS coordinates the interagency review of all applications and submits all comments and recommendations to the Secretary of Environmental Affairs for final funding decisions. The Executive Office of Environmental Affairs' Interagency Lands Committee (ILC) reviews recreation project applications to ensure project coordination with state agency programs, executive orders and environmentally sound land use policies. The Committee consists of representatives from the Departments of Conservation and Recreation, Fish and Game, and Agricultural Resources, and can include other EOEa personnel. The ILC considers each project and its impact on the statewide conservation vision articulated in *An Open Space Plan for Massachusetts: A Partnership*, and *Massachusetts Outdoors 2000! – The Statewide Comprehensive Outdoor Recreation Plan (SCORP)*. The ILC also serves as the review panel to satisfy the National Park Service requirements under the Open Project Selection System.

In reviewing applications and developing their recommendations to the Director of Conservation Services, the ILC considers:

1. Demographics

Four categories are evaluated by DCS to calculate a community's demographic score. Communities with higher Population Density, lower Equalized Valuation Per Capita, lower Median Income, and lower Percentage of Households Below Poverty Level receive higher demographic scores. (Scores are calculated by DCS; therefore, there is no need to submit any statistics or narrative on your community's behalf.)

2. Community Profile Score

Environmental Justice Community – calculated by EOEa's EJ Director.

State Designated Economic Target Area – obtained from Department of Economic Development

Commonwealth Capital Score - EOEa encourages land use decisions that protect environmental quality and preserve natural resources. Unplanned growth not only threatens the environment, it also can adversely affect the timely provision of needed infrastructure, and has a tremendous fiscal impact on communities. This impact, in turn, puts future economic opportunities at risk. The Office for Commonwealth Development has developed sustainable development criteria and will evaluate and score each applicant community. Please submit a Commonwealth Capital Application for your community, available online at <http://www.mass.gov/ocd/comecap.html>, to obtain your score.

3. Project Quality

- Consistency with EOEa policies, including a cooperative grant effort, the development of a long term maintenance plan, protection of water-based recreation, regional or statewide projects, ADA compliant projects, and environmental education facilities
- Addition of new parkland by acquisition or rededication
- Green infrastructure
- Consistency with Massachusetts Outdoors 2000! (SCORP)

4. The applicant's past performance on DCS funded projects.

Timely, comprehensive and diligent project management is critical to the success of a community's current and future applications. Applicants who have successfully completed prior projects, and who have no outstanding conservation or parkland conversion issues will be considered favorably.

SELECTION NOTE: Preservation of Agricultural Land

Executive Order #193 discourages the irreversible conversion of the Commonwealth's productive agricultural land base. State Grants shall not be used to encourage the irreversible conversion of agricultural land to other uses when feasible alternatives are available. In the event that all feasible alternatives have been explored, and the conversion of suitable agricultural lands to non-agricultural use remains the only feasible alternative to protection of open space, a mitigation plan must be developed to be eligible for reimbursement under a state grant. Project that would convert any prime agricultural lands should consult with the Department Agricultural Resources at (617) 626-1700 prior to submitting an application.

RATING SYSTEM for Outdoor Recreation Projects

CATEGORY	SUB-CATEGORY	Description	Partial Points	Max
DEMOGRAPHICS	Population Density	Figures are obtained from MISER and put into rank order by DCS	1-9	10
	Equalized Valuation Per Capita (EVPC)	Figures are obtained from Dept. of Revenue, Division of Local Services and put into rank order by DCS	1-9	10
	Median Income	Figures are obtained from MISER and put into rank order by DCS	1-9	10
	Percentage of Households below Poverty Level	Figures are obtained from MISER and put into rank order by DCS	1-9	10
COMMUNITY PROFILE SCORE	Environmental Justice Community	Calculated by EOE's Environmental Justice Director	1-4	5
	State Designated Economic Target Area	Designated by the Department of Economic Development		2
	Sustainable Development Criteria - Commonwealth Capital Score	Criteria developed by Office for Commonwealth Development and required for all "Commonwealth Capital" grant programs. Open Space and Recreation Plan, Housing Compliance, and Local Funding Initiatives among other criteria are considered (see http://www.mass.gov/ocd/comcap.html for details).	1-19	20
PROJECT QUALITY	Consistency with current EOE policies	Joint Cooperative Project Between Applicant and other Municipality, or Non-Profit Organization involving funding from all identified partners		2
		Long term maintenance plan for site including sources of funding and inflation increases		2
		Acquisition, development, or renovation project that protects or enhances water-based recreation		4
		Any project qualifying as regional or statewide (see definitions at http://www.mass.gov/envir/dcs)		4
		Site offers interpretive services and/or environmental education		2
	Addition of new dedicated parkland by acquisition or rededication	Acquisition or formal dedication of parcel with unique natural (rare species, ACEC, geologic, or landscape feature), cultural resources (historical or archaeological), or wetlands	1-5	6
		Conversion of brownfields to "greenfields" and formal park dedication		
		Project that expands municipality's park and outdoor recreational facilities		
	Green Infrastructure	Project that is part of a linked system (geographical) of conservation, recreation, or protected land areas or facilities such as greenways, river corridors, or enhancement of project previously assisted with DCS funds, or that connect to major state, federal, or inter-municipal open space	1-3	4
	Consistency with <u>Massachusetts Outdoor 2000!</u> (SCORP)	Points awarded based on how high activity or facility rates under Chapter 5: The Regional Perspective	1-5	6
		Renovation project (upgrading existing facilities)	1-2	3
TOTAL				100



LAND & WATER CONSERVATION FUND PROGRAM OVERVIEW

The Land and Water Conservation Fund Act was authorized in 1965 (P.L. 88-578, 16 U.S.C. 4601-4-4601-11) and extended in 1987 through FY 2015 (P.L. 100-203). The original intent was to appropriate no less than 60 percent of the entire LWCF account for the stateside program, which is funded by offshore oil leases on federal land. But this balance has never been attained and, over the years, the Federal side of the program has eclipsed the stateside. For local communities trying to provide quality recreational areas close to home, the LWCF stateside program is a key tool. Demand for support of worthwhile, eligible projects in Massachusetts and across the country has far exceeded available funds. In Massachusetts, as in many states with overcrowded urban areas, the LWCF stateside program offers a crucial way to reclaim a small portion of the limited open space that remains, and to renovate recreational facilities that are seriously overused.

Funds can be used by the state (Departments of Recreation and Conservation and Fish and Game), as well as cities and towns to acquire and/or develop conservation and recreation land. Massachusetts has received \$92.3 million during since 1965. Land acquired or developed with these funds become protected under Article 97 and federal regulations - and cannot be converted from intended use without permission from the National Park Service and EOE. A converted site must be replaced with land of equal value not already in recreational use, and of equal utility to the converted site. Conversion proposals must also be approved by the National Park Service, through EOE, and land of equal value and utility substituted. Strict appraisal requirements apply using the Uniform Appraisal Standards for Federal Land Acquisitions.

By state requirement, a Massachusetts community must prepare a local open space and recreation plan that is updated every five years in order to be eligible for LWCF grants. The LWCF program itself requires states to prepare Statewide Comprehensive Outdoor Recreation Plans and update them every five years in order to receive funds from the Federal government. These requirements help ensure well-thought out uses of land, and prioritization of projects.

The stateside program has been used successfully to aid in acquisition of conservation projects such as hunting and fishing sites, heritage corridors, greenways and riverways as well as funding the development of outdoor recreation facilities. The LWCF program makes an important contribution to the protection of wildlife habitat, water quality, farmlands, and archaeological sites as well as providing a quality outdoor recreation experience.

Past projects funded through the stateside program in Massachusetts include Boston Common and Franklin Park in Boston, state Heritage Parks in Holyoke, Lynn, Lowell and New Bedford, areas in the Blackstone River Valley National Heritage Corridor, and the historic Paine Estate in Wayland.

The impact of these protected conservation and recreation areas can be evaluated in human as well as environmental terms. LWCF projects play an important role in improving the quality of life in many communities by providing access to sites that are close to home and can be enjoyed regardless of mental or physical disability. Inner city residents acknowledge that park and recreation areas offer a positive alternative to crime and gang violence. They also help people to learn to appreciate the value of protecting natural resources, since positive results can be seen in one's own neighborhood.

The LWCF program was purposefully designed to ensure that the local project sponsor (a municipality or state agency) makes a clear commitment to the project. The program only pays up to 50 percent of the total project cost, and many projects have required the local sponsor and neighboring private interests to invest much more than 50 percent. For example, it was estimated that the Lechmere Canal project in Cambridge leveraged ten private dollars for every single public dollar spent. Furthermore, maintenance costs are solely the responsibility of the local sponsors, and future grants are withheld if grantees cannot demonstrate an ability to care for the federally assisted sites they already have.

This is a cost-effective partnership program that is making a big difference with very limited funds. While the grant source is federal, the program is largely administered on the state level resulting in a more timely and efficient delivery system. DCS has long advocated that the LWCF program is flexible enough to cover many of the initiatives that have been popular such as protecting greenways, riverways, and priority watershed lands and redeveloping brownfields. It is much more efficient to use an existing program with some modifications than it is to reinvent entirely new programs.

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DEFINITIONS OF “REGIONAL” AND “STATEWIDE” AS TERMS USED IN THE 1984 AMENDMENT TO THE URBAN SELF-HELP ACT

WILLIAM E. RANDALL, Ph.D.

**LEISURE STUDIES AND RESOURCES PROGRAM
DEPARTMENT OF LANDSCAPE ARCHITECTURE AND REGIONAL PLANNING
UNIVERSITY OF MASSACHUSETTS
AMHERST, MASSACHUSETTS**

MARCH, 1985

The Urban Self-Help Law has provided cost-sharing for acquisition of outdoor recreation lands by cities of any size, and for towns exceeding 35,000 in population. The 1984 amendment broadened allowable projects to include development, as well as acquisition. Further, it extended eligibility to towns with lesser population sizes provided the proposed projects would be of regional or statewide usage. It is toward the definition and characterization of these latter two terms, in context of these smaller towns, that this study is directed.

It would be optimal, if outdoor recreation opportunities were available equally to all citizens of the State. Unfortunately, however, the distribution is uneven, with the available open spaces being more commonly away from the dense areas. Much progress has been made and the 1984 amendment provides an opportunity to gain even more progress toward this goal.

In order to approach the task of defining the terms “regional” and “statewide” usage in such ways as to be of help to the Division of Conservation Services as it attempts to sort out the various proposals from towns. More specifically, the lower and upper limits of these two levels must be distinguished. It is clear that the legislative intent was not to accommodate single towns providing merely for their own residents. It is further, assumed that it was not the legislative intent to expect individual towns to substitute for the state park system by providing for all of the citizens of the Commonwealth.

The usual definition in the park and recreation literature pertains to a larger scale than prevails in Massachusetts. In most states incorporated areas are scattered and surrounded by unincorporated areas served by county government. “Regional” trends to equate with “county” or with “special taxing district (or authority).” The latter commonly consist of a unique area for some unincorporated fringe areas. Since Massachusetts has no unincorporated land, county government is of minor importance and provides almost no outdoor recreation. In any case, county governments are not eligible to apply under this act. A useful definition for Massachusetts must be found in other ways than by reliance on literature.

Dr. Rutherford Platt¹ has recently summarized aptly the concept and usage of “region:”

Regionalism is the Holy Grail of American land use planning and resource management. Since at least the late nineteenth century, progressive thinkers and reformers have advocated “regionalism as a response to the inequities and diseconomies of the American urban system.

¹ Platt, Rutherford, n.d. *Metropolitan Regionalism: Implications for Flood Loss Reductions*. Working Paper No. 11, p 1. Land & Water Policy Center, Dept. of Geology and Geography. University of Massachusetts, Amherst, MA.

The term “regionalism”, however, lacks any accepted definition. Geographically, it may encompass areas ranging in size from slightly more than a single municipality to groups of states designated for administrative or statistical purposes by the federal government. Kruecheberg² cites a common adage among planners:

“Q” : What is the region?

“A” : The region is the next level above the one on which we have been working but cannot find a solution.

Regionalism is also vague as a term of art. Lewis Mumford and Benton MacKaye have advocate regionalism as a normative concept, a “better” approach to the ordering of settlements than to leave all planning decisions to the private owner and local municipality. In another sense, regionalism is a pragmatic term, denoting the provision of governmental services at some level of government, which encompass a broad geographic area. In such cases the breadth of the geographic area presumably relates to the type of function involved.

As a result of such considerations and in recognition of the small size of the Commonwealth, one eventually arrives at the conclusion that arbitrary definitions are necessary, based on best judgment.

The goal of the law, by title, is to serve urban populations, and, by amendment, to serve populations less than urban, but greater than that of a small (under 35,000 population) town. The dual nature of the goal leads to a duality of criteria.

First, it is proposed that any such small town proposing an outdoor recreation development intended to serve one or more nearby urban areas or population centers in addition to its own residents be considered eligible if the total population to be served exceeds 35,000 and if the proposal meets other criteria.

Secondly, it is proposed that radial limits be recognized for distinguishing among the projected populations to be served.

Because of the small size of Massachusetts, hardly any town is more than 25 miles from a state border or a population center. Therefore, it is proposed that a radius of 25 miles be adopted as the cutting edge between regional and statewide population areas. This is half the distance between the New Hampshire-Vermont state line and the Connecticut-Rhode Island state line. It is also half the distance between Boston and Lowell, Worcester or Fall River.

In turn, any project, which can reasonably be expected to serve a population drawn from farther than 25 miles, may be considered of statewide significance. Since state and federal agencies and others provide outdoor recreation opportunities for the citizens of the entire state and more, it is assumed that the legislature may not really intend to restrict “statewide” to a literal definition, rather to something greater than “regional”.

It is proposed, therefore, to consider the “statewide” criterion met if the proposed outdoor recreation development will serve a population within a one-hour drive. One hour of driving will take one from Vermont or New Hampshire to Connecticut or Rhode Island and two and one-half hours of driving will reach from Boston to the New York state line.

In summary, it is proposed that:

1. Projects to serve only the residents of a town under 35,000 population be considered of town-wide significance and ineligible;
2. Projects to serve a regional population of 35,000 which resides within a radius of 25 miles be considered of regional significance and eligible; and
3. Projects to serve one or more urban areas and/or the residents living within a one-hour driving radius be considered of statewide significance and eligible; provided other appropriate criteria are met.

² Kruecheberg, D.A. (ed.) 1983. Introduction to Planning History of the United States, New Brunswick: Rutgers University Center for Urban Policy Research.

In addition to the criterion of size of population to be served, other factors to be addressed here pertain to accessibility, size, site features and development proposed.

In both regional and statewide projects, all age groups should be served. Barriers to the handicapped should also be overcome.

Access by automobile should be available in the form of roads of reasonable capacity and quality. Where appropriate, accessibility by public transportation and/or other means, such as boats, bicycles, or walking should be provided.

An important feature, where private transportation is used, is adequacy of parking accommodations. The regional facilities should provide ample parking for at least 100 cars at one time, and statewide areas, 200 or more cars.

In addition to vehicular access, such areas need to provide adequate comfort stations and outlets for potable water, consistent with the standards and ratios contained in the State Sanitary Code, and with design capacity to match the expected peak populations of users as indicated by the public transportation and parking accommodations.

As to size of areas, the standards of the National Recreation and Park Association specify that a regional park, as here defined, should have an area five to ten acres per thousand residents of the area served, while a statewide facility, as here defined, should approximate 20 acres per thousand. These are not figures to be followed slavishly since they represent a national perspective, and generally refer to comprehensive parks, but they do give some indication of the concept that the statewide areas are expected to provide for more dispersed forms of outdoor recreation.

In general, the areas of less than 100 acres are likely to be of more value in the regional context, while statewide areas may exceed this figure.

The general expectation is that regional areas will provide relatively close to home opportunities for a day's outing to participate in activities not adequately available near home. Picnicking, walking, canoeing, boating, bicycling, fishing, play areas, simple nature study, day camping, golf courses, and beaches are typical activities and features which may be considered at a regional facility.

At a statewide area any of the above may be found, but at a greater scale. In addition, one might expect such more dispersed activities as hiking, bridle and snowmobile trail systems, overnight tenting and group camping areas, large-group picnic sites, minitrains, children's zoos, botanic gardens, nature centers with programs, scenic drives, and skiing hill facilities.

In both cases scenic and historic resources are desirable. A diversity of terrain, streams, hills and valleys, lakes and ponds, uplands and marshes, woods and fields will add attractiveness to such areas. A statewide facility is most apt to incorporate or adjoin a unique uncommon resource or cultural significance.

Concessions for sale of food and beverages, film and the like and the rental of boats and other equipment may be necessary to enhance usage.

In summation, a regional facility consists of an area designed to provide outdoor recreation opportunities for a large population within a twenty-five mile radius when such population is not already being adequately served by facilities more conveniently located to them and which have adequate capacity. It may be provided by a single town or by a special recreation district consisting of two or more towns. It need not offer a broad array of activities, but ones consistent with the characteristics of the site and with the intent of augmenting opportunities available elsewhere, as described above. It must do so with a design capacity for 100 automobiles and their occupants.

A statewide facility may do any of the above in serving a larger area and its population as well as providing for more dispersed activities for which groups, families, and individuals will travel up to an hour because such opportunities for forms of outdoor recreation which are available closer to home but are not of sufficient capacity or are otherwise inaccessible (i.e. barriers to the handicapped).

Alternately, they may complement or enhance activities of other entities, such as national or state agencies. For example, provision of warming huts or trail networks, which tie in with existing areas to make them more accessible or more attractively usable, may be considered adequate justification for inclusion in eligibility. Another favored type of proposal would be that of providing access to unique natural, cultural, or park and recreation resources not otherwise conveniently reachable.

Finally, it seems important to specify that grants should be for construction, development, or renovation (as well as acquisition of land or existing outdoor recreation facilities), but not for maintenance, and that any such grants should be made only when in receipt of commitments for adequate operation and maintenance within the foreseeable future.

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**URBAN SELF-HELP
REGIONAL AND STATEWIDE
USAGE REPORT**

URBAN SELF-HELP Project Name and Number _____

Refer to Urban Self-Help regulations 301 CMR 5.01:1 & 4 for clarification of regional and statewide requirements.

1. Is the referenced project intended to be:
_____ Regional or _____ Statewide

2. What is the population of the applying municipality? _____

3. What municipality(s) is/are located within a 25 mile radius of the proposed facility center and what are their populations according to the 1990 state census?

Municipalities: _____

Populations: _____

4. Provide figures on building density, population, and the rate of household growth/decline (in %) over the past four years. Also the average for the first three out of four years (years 2 – 4 below) should be provided for each category.

	Most Recent Year	Year 2	Year 3	Year 4	Average
Building Density	_____	_____	_____	_____	_____
Population	_____	_____	_____	_____	_____
Household Growth	_____	_____	_____	_____	_____

5. What Metropolitan Statistical Area (SMA) are located within one hour driving time from the recreational facility? (refer to attached map)

6. What age groups are served by the proposed project? List facilities to serve these age groups.

Age Group:	Facilities:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

7. What is the proposed total quantity of vehicle parking spaces? _____

8. If regularly scheduled public transportation serves the site, briefly describe mode and regularity of services.

9. List the proposed quantities of the following facilities to be present.

Toilets men _____ women _____

Sinks _____

Potable Water Outlets (i.e. bubblers) _____

10. Total number of acres associated with project site: _____

11. List any outstanding or unusual scenic, natural, or historic resources associated with the site, (i.e. overlook, waterfalls, historic structures, cultural resources)

12. List any additional facilities or recreational resources not included in item above:
